

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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ANTHONY FINLEY,

Petitioner,

v.

GREG SMITH, et al.,

Respondents.

Case No. 3:13-cv-00062-MMD-VPC

ORDER

This closed habeas action is before the Court on petitioner's motion styled as a motion to file a notice of appeal as within time. (Dkt. no. 30.) Plaintiff essentially seeks to reopen the time to file an appeal.

Final judgment was entered on February 24, 2014. In the motion and notice of appeal, petitioner asserts that the papers were mailed for filing on or about May 30, 2014. However, in the certification filed with the notice of appeal, petitioner refers to and attaches a document dated June 17, 2014, so the papers could not have been mailed for filing prior to that date.

At this juncture, a district court may reopen the time to file an appeal only if all of the conditions of Rule 4(a)(6) of the Federal Rules of Appellate Procedure (FRAP) are satisfied.

The relevant provision states in full:

(6) Reopening the Time to File an Appeal. The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

1 (A) the court finds that the moving party did not receive  
2 notice under Federal Rule of Civil Procedure 77(d) of the  
3 entry of the judgment or order sought to be appealed within  
21 days after entry;

4 (B) the motion is filed within 180 days after the judgment or  
5 order is entered or within 14 days after the moving party  
6 receives notice under Federal Rule of Civil Procedure 77(d)  
of the entry, whichever is earlier; and

6 (C) the court finds that no party would be prejudiced.


7 FRAP 4(a)(6).

8 The motion as docketed itself states no viable basis for relief under FRAP  
9 4(a)(6). However, the certification referenced therein instead was docketed with the  
10 notice of appeal. Petitioner states therein, *inter alia*, that: (a) "[u]nfortunately my legal  
11 documents were considered evidence and were held by the investigation officer here at  
12 Warm Springs, Correctional Center;" and (b) "[t]he documents were just return [sic] to  
13 me 6/17/14 after requesting them several times."

14 The Court will direct respondents to submit with their response a redacted copy  
15 of the relevant mail log or other record reflecting when petitioner received a copy of the  
16 order and judgment of dismissal in this matter. The Court is cognizant that petitioner has  
17 the burden of proof on the motion, but the record generally is more readily available to  
18 respondents. The Court is seeking to resolve the motion promptly given that the Court  
19 of Appeals likely will hold action on the appeal pending the resolution of the motion.

20 It is therefore ordered that respondents shall have thirty (30) days within which to  
21 respond to petitioner's motion and shall file therewith a redacted copy of the relevant  
22 mail log or other record reflecting when petitioner received a copy of the order and  
23 judgment of dismissal in this matter, under a covering declaration by an appropriate  
24 records custodian.

25 DATED THIS 24<sup>th</sup> day of June 2014.

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28 MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE